IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE, JURISDICTION

CRIMINAL WRIT PETITION NO.1982 OF 2005

Shri Atik Ahmed Salimuddin Shaikh,)
Age: 30 years,)
Residing at Sanjay Nagar)
hutment, Baiganwadi,)
Govandi, Mumbai-400 043.) PETITIONER
(The petitioner is at present)
detained at Nashik Road,)
Central Prison at Nashik.))

Versus

1. Shri.A.N.Roy,)
Commissioner of Police,)
Mumbai.)
)
2. The State of Maharashtra)
)
3. The Superintendent,Nasik)
Road, Central Prison, Nasik.) RESPONDENTS.

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Mr. U.N.Tripathi, Advocate for the Petitioner.

Mrs. A.S.Pai, APP for the State.

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CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : MARCH 23, 2006.

ORAL JUDGMENT (PER TAHILRAMANI,J.)

1. Through this Petition under Article 226 of the Constitution of India, the petitioner-detenu has impugned the order of detention dated 13th May, 2005 passed by respondent No.1 Shri A.N.Roy, Commissioner of Police, Mumbai. By the said order, the detenu came to

be detained under Sub-Section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the MPDA Act). The detention order alongwith grounds of detention dated 13th May, 2005 was served on the petitioner-detenu on 19th May, 2005.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on one C.R. i.e. C.R.No.255 of 2004 and two in-camera statements. The said C.R.No.255 of 2004 is under Sections 307, 323, 504, 506 read with 34 of Indian Penal Code.

. The facts relating to C.R.No.255 of 2004 are that on 19.11.2004 at 7:30 hours, the complainant and his friend Sachin were passing near 90ft. road. At that time, the complainant saw the detenu with a chopper in his hand alongwith his brothers. The detenu and his brothers were shouting and were running towards them. The detenu assaulted the complainant with chopper. Due to the incident, the people in the vicinity ran helter skelter and some people closed the doors and windows of their houses.

. Besides this C.R.No.255 of 2004, the order of detention is also based on two incidents which have been stated by in-camera witnesses A and B. However, for deciding the present Petition, we do not feel it necessary to go into the details of the said two incidents.

3. We have heard Mr.Tripathi learned Advocate for the petitioner and Mrs.Pai learned APP for the State. Although, in this Writ Petition many grounds have been pleaded, Mr.Tripathi has only pressed two grounds i.e. Ground No.9(F) and 9(D). Ground No.9(F) is as under :

> "9(F). The petitioner says and submits that on 30.05.2005 the learned Sessions Judge passed an order in C.R.No.255/04 rejecting the bail application of the petitioner preferred in C.R.No.255/2005 wherein it is stated by the learned Judge that the Court feels that in this case till the charge sheet is filed the accused petitioner should not be released on bail. Which means it is clear that either charge sheet in the case was not filed in the Court till 30.5.2005 or the filing of charge sheet was suppressed to the learned Sessions Court. On the contrary the detaining authority in Para 5(a)(ix) of the grounds of detention has clearly mentioned that charge sheet in this case was filed on 11.05.2005. It is therefore clear that sponsoring authority has not placed before detaining authority documents and proper informations which could have influenced the mind of the judicial authority to grant bail and which ultimately might have influenced the satisfaction of the detaining authority. The sponsoring authority is called upon to explain the lapse. The satisfaction of the detaining authority vitiates. The order of detention is

illegal and bad in law, ought to be quashed and set aside."

4. Mr.Tripathi has submitted that the detenu had preferred an application for bail. The said application came to be rejected by the learned Sessions Judge by order dated 30.5.2005. In the said order, it is mentioned that till the charge sheet is filed, the accused should not be released on bail. Mr.Tripathi has pointed out that the learned Sessions Judge on 30.5.2005 has observed that the charge sheet was not yet filed and hence the learned Judge rejected the application for bail of the detenu. However, in the grounds of detention, the detaining authority in para 5(a)(ix) has stated that, "On 11.05.2005 the chargesheet of this case was filed by Senior Inspector of Police, Shivaji Nagar Police Station against you and your associates before Ld.M.M. 45th Court, Kurla, Mumbai, vide C.C.No.500/PW/05." Mr.Tripathi submitted that, in view of the order passed by the learned Sessions Judge, it is clear that the charge sheet was not filed till 30.05.2005. Hence, the averment in the grounds of detention is clearly erroneous, which shows non application of mind on the part of the detaining authority hence the detaining authority would be vitiated.

5. The said ground has been replied by the detaining authority in his return in Para-12. In the said reply, it is stated that the charge sheet was filed on 11.05.2005 and the said facts were brought to the notice of the Hon'ble Court. However, inadvertently in the order it is mentioned that the charge sheet was not filed. In the return, it is further stated that when the bail application was pending before the Sessions Court, on 17.05.2005 the detenu was furnished the copy of charge sheet and his signature by way of acknowledgement has been duly obtained. It is further stated that the fact that the charge sheet in C.R.No.255 of 2004 was filed on 11.05.2005 was brought to the notice of the detaining authority by the sponsoring authority and the same had been considered by him and, therefore, the said fact is reflected in the grounds of detention by way of passing reference in order to complete narration of facts.

6. Mr.Tripathi has fairly admitted that indeed the charge sheet was filed on 11.05.2005. He has submitted that however in such case the sponsoring authority is at fault as it had not pointed out to the Sessions Court that the charge sheet was filed. Due to this, the bail application of the detenu came to be rejected.

It is an admitted fact that, the charge sheet was filed on 11.05.2005 and the copy thereof was supplied to the detenu on 17.05.2005. It is pertinent to note that in the present case, we are only concerned with the issue whether there was sufficient material before the detaining authority to come to the conclusion that it was necessary to detain the detenu. We would also have to see whether there was any non-application of mind on the part of the detaining authority so as to vitiate the detention order. As far as the detaining authority is concerned, we find that there was sufficient material before the detaining authority to come to the conclusion that it was necessary to detain the detenu. As indeed the charge sheet has been filed on 11.05.2005, the averments of the detaining authority in the grounds of detention are correct. Hence, we find that there is no non-application of mind on the part of the detaining authority. Even assuming that the date of the charge sheet was wrongly stated in the grounds of detention, in our opinion that fact could not be said to be such as to vitiate the order of detention. Thus, we find no merit in this submission.

7. The second ground which has been urged by Mr.Tripathi i.e. Ground No.9(D) reads as under:-

> "9(D). The petitioner says and submits that in C.R.No.255/2004, the detaining authority has referred to the injuries of the complainant who was treated at LTMG Hospital at Sion and in support of the same has taken into consideration and relied on a medical certificate issued by the medical officer of the said hospital. The petitioner says and submits that the said certificate do not disclose the injuries sustained by the complainant and also not legible. There is variance between the medical certificate and the averment of the detaining authority. This shows total non-application of mind of the detaining authority. The order of detention is illegal and bad in law."

8. Mr.Tripathi has contended that the detaining authority has averred in the grounds of detention that the detenu gave blows with chopper on the left side of the chest and right side of the back of the complainant. However, the medical certificate of the complainant only shows injury on the chest and it does not mention any injury on the back of the complainant. Thus, he submits that this shows total non-application of mind on the part of the detaining authority.

9. It is no doubt true that in the order of detention the detaining authority has mentioned that the detenu had assaulted on the complainant with chopper on his back and chest and the medical certificate shows only injury on the chest. The learned APP has pointed to us the documents supplied to the detenu including the FIR i.e. the statement of the

complainant and other material in the case. In the FIR, it is clearly stated that the detenu had assaulted the complainant on his chest and back. Thus, we find that there was material before the detaining authority to make such a averment in the grounds of detention. In this view of the matter, we do not find any non-application on the part of the detaining authority while making such averments in grounds of detention. Thus, this ground is devoid of substance.

10. Mr.Tripathi further contended that the medical certificate was not legible, hence the detenu could not make an effective representation. As far as the legibility of the medical certificate is concerned, the said certificate is in English. However, translation of the said certificate has been given to the detenu in the language known to the detenu. The translation of the said certificate is very much legible and readable. In view of this, it cannot be said that the detenu was prevented from making an effective representation against the order of detention.

11. Lastly, Mr.Tripathi has contended that the detaining authority in Para 5(a)(i) of the grounds of detention has stated that, "Seeing the incident the people in the vicinity ran helter-skelter while some

people shouted and hastily closed the doors and windows of their houses." Mr.Tripathi has further stated that the said averment is made in respect of C.R.No.255 of 2004. Mr.Tripathi contended that however there was no material before the detaining authority to make such an averment in the grounds of detention, hence, there is total non-application of mind on the part of the detaining authority or in the alternative the detaining authority has relied on extraneous material to issue order of detention. In reply to this contention, Mrs.Pai, learned APP, has drawn our attention to the FIR of the complainant in C.R.No.255 of 2004. The copy of the FIR has been admittedly furnished to the detenu. In the said FIR, it is clearly stated that on seeing the incident, people in the vicinity ran helter-skelter and some people hastily closed the doors and windows of their houses. Shouts were also raised at that time. Thus, we find that there was sufficient material before the detaining authority to make this averment in Para-5(a)(i) of the grounds of detention. Thus, this ground too must fail.

12. In the result, this Petition is dismissed and Rule is discharged.

(D.G.DESHPANDE,J.)

(SMT.V.K.TAHILRAMANI,J.)